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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,355	04/19/2004	Tomojiro Sugimoto	119492	1084
7590 10/19/2005			EXAMINER	
OLIFF & BERRIDGE P.O. BOX 19928 ALEXANDRIA, VA 22320			BARNEY, SETH E	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/826,355	Applicant(s) SUGIMOTO ET AL.	
	Examiner Seth Barney	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 8/4/05.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3, 6, 7 and 10 is/are pending in the application.
- 4a) Of the above claim(s) 10 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3 is/are allowed.
- 6) ☒ Claim(s) 6 and 7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

I. Figures 1 to 9F

II. Figures 10 and 11

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the

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case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Applicant's attorney, Gerhard Thielman, on September 29, 2005 a provisional election was made with traverse to prosecute the invention of Species I, claims 3,6, and 7. Affirmation of this election must be made by applicant in replying to this Office action. Claim 10 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claim 6 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,854,670 to Sumisha et al.

Sumisha discloses a fuel injection valve in which a nozzle hole (40) is formed on metering plate (35) and fuel flowing on a face on the upstream side of the metering plate of the metering plate is injected outside of a face on the downstream side of the metering plate, the fuel injection valve comprising a vortex flow generator means (38) for making a flow of fuel passing in the nozzle hole form into a vortex flow, wherein the vortex flow generating means is provided on the upstream side of the metering plate. The vortex generating means is a vortex flow generator groove provided on a face on the upstream side of the metering plate so that the vortex flow generator groove can be connected to a wall face of the inlet of the nozzle hole, and a main stream of fuel flowing in the groove is directed to a position deviating from a center of the nozzle. The depth of the vortex generator groove decreases toward the nozzle hole. See Figure 13.

6. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,170,763 to Fuchs et al.

Fuchs discloses a fuel injection valve in which a nozzle hole (39) is formed on metering plate (36) and fuel flowing on a face on the upstream side of the metering plate of the metering plate is injected outside of a face on the downstream side of the metering plate, the fuel injection valve comprising a vortex flow generator means (40) for making a flow of fuel passing in the nozzle hole form into a vortex flow, wherein the vortex flow generating means is provided on the upstream side of the metering plate. See Figure 8. The vortex generating means is a vortex flow generator groove provided

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on a face on the upstream side of the metering plate so that the vortex flow generator groove can be connected to a wall face of the inlet of the nozzle hole, and a main stream of fuel flowing in the groove is directed to a position deviating from a center of the nozzle. See Figure 8. Fuchs also discloses many different shapes of the vortex flow generator groove, one of which is comma shaped as seen in Figure 11.

### ***Response to Arguments***

7. Applicant's arguments filed August 4, 2005 have been fully considered but they are not persuasive. Regarding the argument on page 6 that "Fuchs fails to teach or suggest a vortex flow generator groove forms....a comma-shape curve..." is not persuasive. Figure 11 of Fuchs shows a comma shaped curve.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 6,513,724 to Joseph et al. discloses a groove decreasing toward the nozzle hole.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seth Barney whose telephone number is (571)272-4896. The examiner can normally be reached on 7:30am-5:00pm (Mon-Fri), first friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571)272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Seth Barney  
Examiner  
Art Unit 3752

  
**David A. Scherbel**  
**Supervisory Patent Examiner**  
**Group 3700**

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